Supreme Court, U.S.
FILED
AUG 11 2006
OFFICE OF THE CLERK

No. 06-227

In The

Supreme Court of the United States

WAYNE SHATLEY,

Petitioner,

versus

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

HERBERT V. LARSON, JR.
700 Camp Street
New Orleans, Louisiana 70130
(504) 528-9500
Counsel of Record

Attorney for Petitioner
Wayne Shatley

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW[1]

I.

Whether the Federal Sentencing Guidelines, by permitting sentencing judges to impose enhanced sentences based upon their determination of facts not found by the jury, or admitted by the defendant, violate the Fifth and Sixth Amendments to the United States Constitution.

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[1] The names of all parties to this proceeding appear in the caption. See Rule 14.1(b) of the Supreme Court Rules.

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OPINIONS IN THE COURTS BELOW

The ruling of the district court dismissing Shatley's objections to the presentence report and the sentencing enhancements urged by the Government contained therein is not reported. That ruling is found at pages App. 8-20 of the Appendix. The opinion of the United States Court of Appeals for the Fourth Circuit, affirming Shatley's sentence is reported as *United States v. Shatley,* 448 F.3d 264 (4th Cir. 2006). This opinion is found at pages App. 1-7 of the Appendix.

BASIS FOR JURISDICTION IN THIS COURT

Petitioner Shatley seeks review of a final judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on May 16, 2006. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1254, and Rule 13 of the Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part: "No person shall be deprived of . . . life, liberty or property without due process of law. . . ."

The Sixth Amendment to the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury. . . ."

STATEMENT OF THE CASE

In July, 2003, a federal grand jury sitting in the Western District of North Carolina returned a seven-count indictment, charging Wayne Shatley and four other defendants with conspiring to buy votes (18 U.S.C. § 371) and actual vote buying, in violation of 42 U.S.C. § 1973(i). Shatley was named as a defendant in the conspiracy count, and in three substantive counts. Nowhere in the indictment was it alleged that Shatley was a leader, or organizer of criminal activity involving at least five participants, or that he obstructed justice during the investigation of the charged offenses.

In May, 2004, Shatley and two of his four co-defendants were tried by jury. The jury found Shatley and his two co-defendants guilty as charged. The jury was not asked to make, nor did it make any findings regarding Shatley's position as a leader or organizer of criminal activity involving at least five persons, nor did it find that he had obstructed justice during the investigation of the charged offenses.

Following the jury's verdict, the district court ordered a presentence investigation report regarding Shatley. In that report, the Government contended that Shatley was a leader or organizer of criminal activity involving five or more persons, and that he had obstructed justice during the course of the investigation of the offenses in the indictment. Accordingly, the Government argued that these two factors, or sentencing enhancements, should raise Shatley's potential sentencing range from the presumptive guideline range of 10 to 16 months imprisonment to a range of 27 to 33 months imprisonment.

Subsequent to the jury's verdict, but before Shatley was actually sentenced, this Court handed down its opinion in *Blakely v. Washington*, 542 U.S. 296 (2004). Specifically relying on that opinion, trial counsel for Shatley filed objections to the portions of the presentence investigation report that suggested that Shatley's sentence be increased based on the two factors described above.

At Shatley's sentencing, which was held in December, 2004, the district judge overruled Shatley's objections to these sentencing factors, and imposed a sentence of 33 months imprisonment; *i.e.*, the maximum possible sentence under the enhanced guidelines. This sentence was more than double Shatley's maximum guidelines sentence in the absence of these factors.

In addition, because of the legal uncertainties regarding the validity of the federal sentencing guidelines that followed this Court's opinion in *Blakely*, the district court, acting in accordance with the opinion of the Court of Appeals for the Fourth Circuit in *United States v. Hammoud*, 381 F.3d 316, *vacated*, 543 U.S. 1097 (2005), also imposed an "alternative" sentence, *i.e.*, a nonguidelines sentence. That sentence was also 33 months.

Less than a month after Shatley was sentenced, this Court handed down its opinion in *United States v. Booker*, 543 U.S. 220 (2005).

On appeal to the Fourth Circuit, Shatley argued that the express language of *Booker* limited the district court to a maximum sentence of 16 months, as this was the maximum sentence permitted by the facts reflected in the jury's verdict.

The Court of Appeals agreed, but only in part, finding that

> [i]t is undisputed that the sentence imposed on Shatley under the Sentencing Guidelines violated his Sixth Amendment right to a jury trial, as articulated in *United States v. Booker*, 543 U.S. 220 (2005), because the court imposed a sentence in excess of that authorized by the facts found by the jury. The remaining issue is whether the Sixth Amendment violation was prejudicial, given the fact that the district court announced an alternative nonguideline sentence under 18 U.S.C. § 3553(a) identical to the Guidelines sentence.

Appendix, pp. App. 4-5.

The Court of Appeals found that this alternative nonguideline sentence "saved" the 33 months sentence, and rejected Shatley's arguments that: (1) the sentence imposed upon him was illegal because it exceeded the constitutional maximum for the offense of conviction, and (2) imposing the same illegal sentence under a different rationale cannot make it legal. In the view of the Court of Appeals, "it is not the length of the sentence that offends the Sixth Amendment, but rather the process used to determine its length." *Shatley, Appendix*, pp. App. 1-7. This petition for *certiorari* is in consequence of that ruling.

ARGUMENT

1. The Court has already granted *certiorari* to review this issue

The precise issue presented by this petition, albeit in the context of a state criminal proceeding, is already before the Court, in proceedings #05-6551, entitled *John Cunningham v. The State of California*. Accordingly, in the interests of judicial economy, *certiorari* should be granted in this proceeding to review the question presented, and its applicability to the federal sentencing guidelines. Alternatively, this petition should be held in abeyance of that proceeding, and at such time as the Court renders its opinion in that matter, the Court should act on this petition.

2. The Court of Appeals for the Fourth Circuit has decided an important question of federal law which has not been, but which should be settled by the Court

In this Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring v. Arizona*, 536 U.S. 584 (2002), and *Blakely v. Washington*, 542 U.S. 296 (2004), the Court announced, and repeatedly confirmed what has come to be known as the *Apprendi* rule. To use the words of the Court in *Blakely*:

> This case [*Blakely*] requires us to apply the rule we expressed in *Apprendi v. New Jersey*, 530 U.S. 466, 490, 147 L.Ed. 2d 435, 120 S.Ct. 2348 (2000): "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." This rule reflects two longstanding

> tenets of common-law criminal jurisprudence: that the "truth of every accusation" against a defendant "should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours," 4 W. Blackstone, Commentaries on the Laws of England 343 (1769), and that "an accusation which lacks any particular fact which the law makes essential to the punishment is . . . no accusation within the requirements of the common law, and it is no accusation in reason," 1 J. Bishop, Criminal Procedure § 87, p.55 (2nd ed. 1872). [footnote omitted] These principles have been acknowledged by courts and treatises since the earliest days of graduated sentencing; we compiled the relevant authorities in *Apprendi, see 530 U.S., at 476-483, 489-490* (THOMAS, J., concurring), and need not repeat them here. [footnote omitted].
>
> * * *

Blakely, id.

At the time Shatley was sentenced, the maximum "statutory" sentence that he faced, under the guidelines, was 10-16 months, because at the time he was sentenced, the guidelines were mandatory. *See United States v. Booker*, 543 U.S. 220 (2005). And there can be no doubt that statutory maximum for Shatley was raised by fact-finding that was not authorized by the jury's verdict in his case – if only because these facts were not part of the indictment, and thus were never even submitted to the jury. Thus, the question squarely presented by this case is whether *Booker*'s invalidation of the mandatory nature of the guidelines also removed the constitutional requirements concomitant with mandatory, fixed schemes: that facts that increase statutory penalties be alleged, submitted to juries,

and proven beyond a reasonable doubt before they are used to enhance punishments.

In short, contrary to the assertion of the Court of Appeals, it can be the length of the sentence that offends the Sixth Amendment, if the length is greater than the one authorized by the statute at the time the offense was committed – which in Shatley's case, was 10-16 months.

CONCLUSION

Wherefore, this Court is respectfully urged to grant the petition for certiorari, and to thereafter vacate the opinion of the Court of Appeals for the Fourth Circuit .

Respectfully submitted, this 11th day of August, 2006.

HERBERT V. LARSON, JR.
700 Camp Street
New Orleans, Louisiana 70130
(504) 528-9500
Counsel of Record

Attorney for Petitioner
Wayne Shatley

448 F.3d 264

PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Wayne Shatley,
Defendant-Appellant.

No. 05-4118

Appeal from the United States District Court
for the Western District of North Carolina,
at Statesville.
Richard L. Voorhees, District Judge.
(CR-03-35-V)

Argued: March 15, 2006.

Decided: May 16, 2006.

Before WILKINSON, NIEMEYER, and DUNCAN, Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Wilkinson and Judge Duncan joined.

COUNSEL

ARGUED: Herbert Victor Larson, Jr., New Orleans, Louisiana, for Appellant. Matthew Theodore Martens, Assistant United States Attorney, OFFICE OF THE UNITED

STATES ATTORNEY, Charlotte, North Carolina, for Appellee. **ON BRIEF:** Gretchen C.F. Shappert, United States Attorney, Charlotte, North Carolina, for Appellee.

OPINION

NIEMEYER, Circuit Judge:

Wayne Shatley was convicted of conspiracy to buy votes in a North Carolina general election and of three counts of actually buying votes, in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1973i(c). The district court sentenced Shatley under the Sentencing Guidelines, increasing his offense level based on findings that Shatley organized the conspiracy and obstructed justice during investigation of the conspiracy, and sentenced him to 33 months' imprisonment. Following our recommendation in *United States v. Hammoud*, 381 F.3d 316, 353-54 (4th Cir. 2004), the district court also announced that if the Sentencing Guidelines were determined to be unconstitutional, it would impose the same sentence as a "nonguideline sentence" under 18 U.S.C. § 3553(a).

Shatley contends that under *United States v. Booker*, 543 U.S. 220 (2005), "the maximum sentence permitted by the facts of his conviction" is 16 months' imprisonment and that the alternative nonguideline sentence cannot make his illegal sentence legal.

Even though we agree with Shatley that the district court committed *Booker* error, we conclude that, in light of the district court's announcement of an alternative sentence, the error was harmless. We therefore affirm.

I

During the election campaign before the November 2002 general election in Caldwell County, North Carolina, Wayne Shatley and four others engaged in a widespread scheme to buy votes for the Republican candidate for sheriff, Gary Clark. Shatley organized and financed the conspiracy, using $5,000 to $6,000 of his own money, to pay individuals for votes, usually $25 each. Shatley was charged in one count with conspiracy to buy votes, in violation of 18 U.S.C. § 371, and in three counts with actually buying votes on October 30, 2002, in violation of 42 U.S.C. § 1973(i)(c). A jury convicted him on all counts, and the district judge sentenced him under the Sentencing Guidelines to 33 months' imprisonment, selecting the maximum sentence under the applicable guideline range because of the "extensive disruption of a government service" that Shatley caused.

During sentencing, the district court found that Shatley was an organizer or leader of criminal activity that involved at least five participants, justifying a four-level enhancement under U.S.S.G. § 3B1.1(a), and that he "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation" of the offenses of conviction, justifying a two-level enhancement under U.S.S.G. § 3C1.1. The government had presented evidence through the Presentence Report that Shatley induced Anita Moore, one of his co-conspirators, to testify falsely before the Board of Elections that Shatley was not involved in the vote-buying scheme. Shatley had purchased Moore's house during foreclosure proceedings and told her whether she got her house back depended on her testimony. In accordance with its findings, the court enhanced Shatley's offense level

from level 12 to level 18. The findings made by the district court increased the applicable sentencing range from a range of 10 to 16 months' imprisonment to a range of 27 to 33 months' imprisonment. Shatley objected to the enhancements, based on *Blakely v. Washington*, 542 U.S. 296 (2004), because the district court, not the jury, made the factual findings that increased his offense level.

After sentencing Shatley to 33 months' imprisonment under the Sentencing Guidelines, the court also announced an alternative nonguideline sentence:

> Now, the court would impose a sentence under the *Hammoud* case and 18, U.S. Code, 3553 as a nonguideline sentence which would be the same sentence and for the same reasons, that is reflecting particularly deterrence and punishment as well as rehabilitation.

Shatley has filed this appeal, contending that "based upon the straightforward language of the Supreme Court in its opinion in *United States v. Booker*, . . . the maximum sentence that the district court could legally impose upon him was 16 months, as this was the maximum sentence permitted by the facts reflected in the jury's verdict." Shatley requests that his 33-month sentence be vacated and that the case be remanded for imposition of a sentence not greater than 16 months.

II

It is undisputed that the sentence imposed on Shatley under the Sentencing Guidelines violated his Sixth Amendment right to a jury trial, as articulated in *United States v. Booker*, 543 U.S. 220 (2005), because the court imposed a sentence in excess of that authorized by the

facts found by the jury. The remaining issue is whether the Sixth Amendment violation was prejudicial, given the fact that the district court announced an alternative nonguideline sentence under 18 U.S.C. § 3553(a) identical to the Guidelines sentence.

Because Shatley objected to the sentencing enhancements under *Blakely*, we review his sentence for harmless error, *see United States v. Rodriguez*, 433 F.3d 411, 415-16 (4th Cir. 2006); Fed. R. Crim. P. 52(a), and the government bears the burden of proving that the error was harmless, *id.* at 416. In this context, the government must prove beyond a reasonable doubt that the court would have imposed the same sentence in the absence of the constitutional error. *See United States v. Dominguez Benitez*, 542 U.S. 74, 81 & n. 7 (2004); *see also United States v. Hughes*, 401 F.3d 540, 548 (4th Cir. 2005).

We conclude that because the district court announced an identical alternative sentence, treating the Sentencing Guidelines as advisory and considering the statutory sentencing factors in 18 U.S.C. § 3553(a), the government has met its burden of demonstrating that the constitutional error in this case was harmless. *See United States v. Revels*, No. 05-4142, ___ F.3d ___ (4th Cir. May 1, 2006).*

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* In a string of unpublished opinions, we have previously held that such error in imposing a sentence pursuant to the Guidelines is rendered harmless by the imposition of an identical alternative sentence. *See, e.g., United States v. Martinez*, 127 Fed. Appx. 107 (4th Cir. 2005) (per curiam); *United States v. Washington*, 124 Fed. Appx. 809 (4th Cir. 2005) (per curiam); *United States v. Anderson*, 124 Fed. Appx. 211 (4th Cir. 2005) (per curiam). The other circuits that have considered the issue have reached the same conclusion. *See United States v. Dulcio*, 441 F.3d 1269, 1277 (11th Cir. 2006); *United States v. White*, 439 F.3d 433, 436 (8th Cir. 2006); *United States v. McBride*, 434

(Continued on following page)

In *United States v. Hammoud*, 381 F.3d 316, 353-54 (4th Cir. 2004), we recommended that district courts announce, at the time of sentencing, an alternative sentence determined pursuant to 18 U.S.C. § 3553(a) and treating the Sentencing Guidelines as advisory only. The district court followed this recommendation, and its alternative sentence was within the range recommended by the Sentencing Guidelines and was based on the sentencing factors enunciated in 18 U.S.C. § 3553(a), "particularly deterrence and punishment as well as rehabilitation."

Shatley does not contend that the district court's factual findings were clearly erroneous or that the district court incorrectly calculated the sentencing guidelines range based on those findings. Rather, he simply contends that this "'alternative nonguideline sentence' does not change anything. If the sentence imposed upon [him] was illegal because it exceeded the constitutional maximum for the offense of conviction, imposing that same illegal sentence under a different rationale does not make it legal." This argument, however, fails to recognize that it is not the length of the sentence that offends the Sixth Amendment, but rather the process used to determine its length. If the jury had found the facts used to justify the

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F.3d 470, 473 (6th Cir. 2006); *United States v. Simpson*, 430 F.3d 1177, 1190-91 (D.C. Cir. 2005); *United States v. Saldana*, 427 F.3d 298, 314-15 (5th Cir. 2005); *United States v. Christopher*, 415 F.3d 590, 593-94 (6th Cir. 2005); *United States v. Hill*, 411 F.3d 425, 426 (3d Cir. 2005); *United States v. Robles*, 408 F.3d 1324, 1327-28 (11th Cir. 2005) (per curiam); *United States v. Bassett*, 406 F.3d 526, 527 (8th Cir. 2005) (per curiam); *United States v. Serrano-Dominguez*, 406 F.3d 1221, 1224 (10th Cir. 2005); *see also United States v. Knows His Gun*, 438 F.3d 913, 917-18 (9th Cir. 2006).

33-month sentence, Shatley surely would have no complaint. Similarly, if the sentence range was determined pursuant to facts found by the district court but the Sentencing Guidelines were taken only as advisory, Shatley could have no complaint as long as the sentence was entered under § 3553(a).

We have articulated the post-*Booker* procedure for sentencing in *United States v. Hughes*, 401 F.3d 540 (4th Cir. 2005), *United States v. Green*, 436 F.3d 449 (4th Cir. 2006), and *United States v. Moreland*, 437 F.3d 424 (4th Cir. 2006). The district court presciently followed that procedure in determining the alternative sentence. It made its findings of fact, calculated the Sentencing Guideline range, chose a sentence within that range, and then determined that the sentence would serve the purposes listed in § 3553(a). Thus, even though the district court did impose a sentence under the Sentencing Guidelines that violated Shatley's Sixth Amendment rights, it announced at the same time that if the Sentencing Guidelines became advisory, it would impose the same sentence. In making that determination, it properly considered the § 3553(a) factors, as required by *Hughes, Green*, and *Moreland*. We take the district court at its word when it stated plainly that it would impose the same sentence under an advisory guideline system. Thus, the error was harmless; to remand this case now in view of these facts would amount to an "empty formality." *Revels*, ___ F.3d at ___.

Shatley makes no argument that the alternative nonguideline sentence is "unreasonable." *See Green*, 436 F.3d at 457. Accordingly, the judgment of the district court is

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA	)	
vs.	)	DOCKET NO. 5:03-CR-35
WAYNE SHATLEY,	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE RICHARD L. VOORHEES
UNITED STATES DISTRICT COURT JUDGE
DECEMBER 6, 2004

APPEARANCES:

On Behalf of the Government:

MATTHEW T. MARTENS
United States Attorney's Office
227 West Trade Street, Suite 1700
Charlotte, North Carolina

On Behalf of the Defendant:

J. STEVEN BRACKETT
Attorney at Law
1985 Tate Blvd. S.E., Suite 135
Hickory, North Carolina

* * *

[7] people who desperately needed money and the defendant sought them out and preyed on them in order to perpetrate a scheme. They're not victims in a classic sense because it is also a crime to accept money to vote, but

there – there is a degree to which his preying on them is analogous to the vulnerable victim enhancement.

And I think that's what the court recognized, the Fifth Circuit recognized in the Velasquez-Mercado case. In that case the people had been transported across into the United States, smuggled into the United States; and the court said they weren't classically victims, they were customers to some degree. The court noted that the fact that the defendant had preyed on their economic vulnerability was analogous to the vulnerable victim enhancement and in that case also granted a four-level upward departure analogizing to the vulnerable victim enhancement.

So for either of those reasons, the United States believes that there's ample basis in this case for an upward departure and would ask that the court grant such.

THE COURT: All right. Now, then, let me hear from Mr. Brackett.

MR. BRACKETT: Your Honor, if I can address those, I'll address them in reverse order.

First of all, I would suggest to the court that it would not be appropriate to upwardly enhance Mr. Shatley's [8] sentence because of vulnerable victims.

THE COURT: I don't believe he gets to first base on that, with all due respect to the argument.

MR. BRACKETT: Yes, sir.

THE COURT: So you won't need to be heard on that.

MR. BRACKETT: Yes, I won't spend time on that, then.

Then with respect to the disruption of governmental function, I would just ask that the court consider the policy statement in Section 5K2.7. And reading the plain language of the policy statement, that language says, Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice, in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual, the guidelines will reflect the appropriate punishment for such interference.

And I would point out to the court in this case that the – it's already been recommended that his sentence be enhanced for obstruction of justice by the probation office. That there is a finding, a recommendation that there be an enhancement for obstruction of justice which takes us upwardly. So the issue of obstruction of justice in respect to disruption of governmental functions has already been considered in the sentencing.

[9] And secondly, Your Honor, I would say that the very essence of the offense, if you look at the statute under which he's charged, the statutory language that he's charged with is – the element of it that applies to this case is bribery. That is the fact that money was paid for the – to – for the vote, and that's the way he was indicted. That's what he was convicted for. So that has already been considered and to give it a second consideration and give him additional enhancement would be punishing him for the same course of conduct in a duplicated manner.

So I would say to the court that 5 – 5K2.7 by its own policy statement in looking at the offense that he's charged with here would not apply in this case and should not apply based on the policy statement in the guidelines themselves.

And more than that, Your Honor, the only thing that we have to support this argument is the statement of the U.S. attorney here in court. All the things about what went on, there's no record before this court about that whatsoever. Not that I'm questioning or disputing, certainly – it's probably an accurate statement, to be frank with the court, but as far as an evidentiary basis for that, all of these proceedings that went on outside the court are not before the court as a matter of fact, proven fact beyond a reasonable doubt to a jury.

[10] And secondary to that, Your Honor, the cause of that difficulty, assuming that the jury's verdict is accurate, and I accept that verdict, assuming that the jury's verdict is accurate that my client did the things for which he was indicted, the people that caused the disruption in the governmental function eventually were the government's own witnesses. If you remember what they did is they went in to those voting hearings and testified falsely under oath. And then the government brought them in and they changed their testimony in this trial. But if anybody disrupted the process, it would be the folks that the government has come in and asked this court to extend leniency to. If that hearing had been conducted and they had testified honestly, assuming Mr. Shatley is guilty of the offense, it would have gone no further than that. It would have been resolved right there in Caldwell County at the voting election board hearing and we wouldn't have gone through all that. It's the false testimony of witnesses

that the government is going for leniency that caused the disruption and now to single this person out and punish him for disrupting it when in fact it was the government's own witnesses, I'd say would be unfair.

I would like to be heard further on other issues, Your Honor.

THE COURT: All right. Well, with reference to that one, I believe the language in 5K2.7 controls; and while there [11] was substantial disruption of a governmental function of a very extensive nature, the fact is that it appears to be taken into account by the conviction itself and also by the enhancements about which we'll hear the parties at this time. So the motion for upward departure is denied on those grounds.

But I would like to hear – let's begin with you, Mr. Brackett, since you made the objections to the obstruction of justice and the role in the offense enhancement.

MR. BRACKETT: Your Honor, I would not argue those points. The court's heard the evidence in the case and I would not argue those points further.

THE COURT: All right, sir. Anything further before the court rules on the objections?

MR. MARTENS: Nothing then, Your Honor.

THE COURT: All right. The court finds the objections should be overruled in that the evidence is strong and well beyond a preponderance that the defendant was an organizer or leader and that it involved at least five participants; and therefore, as determined by the probation officer, a four-level enhancement is appropriate.

Likewise, as to obstruction of justice. The efforts by the defendant to change the testimony of certain witnesses qualifies for that enhancement.

Now, then, the court also finds that while the defendant does have a significant medical condition, namely [12] diabetes, and has certain medical treatment requirements and so forth, that these do not rise to the level of departure grounds. So that request is overruled either as an objection or for a motion for downward departure.

So let me hear counsel, then, if you would like to be heard on the matter of an appropriate sentence within the guideline range.

MR. BRACKETT: Your Honor, I do want to be heard and I know the court's running a little bit behind schedule this morning. I hope – I'd ask the court to indulge me for just a few minutes.

THE COURT: Time is an inherent factor, but it's never a factor in a particular case.

MR. BRACKETT: Thank you very much, Your Honor.

Your Honor, Mr. Shatley's case has been one of the most unusual I think that I've ever had just by the fact it's unique. I don't think we have these types of cases, fortunately, that come along very often.

But Mr. Shatley is an interesting person and I have concerns about him. I have not filed a motion for him to be psychologically examined, but I'm asking the court as a part of any sentence here that the court consider doing that. I told Mr. Shatley I was going to make these statements to the court. He was a victim, as the court heard

during the trial of this case, of a crime about 15 or 20 years ago in Caldwell [13] County. He had some men who came in and – under the pretext of asking him to invest money, he invested some money with them, and what it was was a sham investment program. He turned that over to the sheriff of Caldwell County, Mr. Hutchins, made a complaint there, a formal complaint with Mr. Hutchins and – about the fact that he had been victimized. Mr. Hutchins, acting as the sheriff, was unable to pursue that because the people who had perpetrated the crime against Mr. Shatley were from South Carolina. As you heard, there was some talk in the trial about – that he raised fighting chickens and these were some people that had been involved in the gamecock fighting business with him and came in and persuaded him to give them a substantial amount of money, around $20,000, and he lost that.

And when the sheriff was unable to do anything about that, Mr. Shatley became obsessed with that and to the point that he paid for billboards, he had billboards put up denouncing the sheriff, complaining about the ineffective work that the sheriff did in protecting the citizens of that county.

He felt like he had conversations with the FBI in which the FBI were working with him and he was cooperating as an agent of the FBI. He went – this went on over a period of time. He complained to federal agents about what had happened to him, his lack of dissatisfaction.

[14] He began to contribute money to the president. He received Christmas cards back from the president, a couple of them, which he has here, and he felt like he had influence or some connections with the president.

He wrote a number of letters, one of which was published here in the Caldwell County newspaper about two years or so before this took place, concerning the immigration of Hispanics into Caldwell County. He felt like the sheriff was allowing them to purchase illegal identification cards and was not properly prosecuting that. He purchased billboards and put billboards up to that effect.

And I think this whole obsession going back 10, 15 years with what had happened to him and the inability of the criminal justice system to deal with that led him to take extraordinary actions, as he's been convicted for here, to see that the sheriff was unseated in this election. And what he did was absolutely wrong, but I feel like in his own mind he felt like he was justified in doing that because he'd been victimized by a crime without any successful results.

I think he completely – the idea that he had contributed to political parties and received communications from the president, Christmas cards, and that sort of thing, just gave him a completely distorted picture of the political process, and I told Wayne that. He still in his heart is convinced that he has been the victim of a big conspiracy. [15] That the sheriff was a part of that. That the sheriff was, to use a colloquialism, in cahoots with the people who took his money and never wanted to prosecute them.

He's accused the sheriff here publicly in a letter to the editor that about $5 million had been made there in Caldwell County by the sale of these illegal identifications.

I've spoken with the U.S. attorney about this, about the fact that they think this may have been something that was some greater effort by a local political party to

influence or change the election. It absolutely was not. This was something that was done by Mr. Shatley for his own motivations, the reasons I've stated here to the court, Wayne's been a good citizen otherwise. He's worked there productively. He's done very well for a man of his limited education. You couldn't ask for an easier parson to get along with.

As far as preying on the people in the community, those were basically his friends. Those were the people he associated with and knew, his acquaintances. I don't think he intended any harm to come to them. He's heartbroken over the fact that they may go to prison over what he involved them in.

And he's a good person, Judge. He's going to be 61 years of age. He's diabetic. He's going to go to prison now for a substantial period of time. Be has no one there to manage his rental property. You know, he's estranged from his [16] son. He has no wife. So he's going to try to make arrangements to have somebody take care of his property and hopefully he'll have enough to live on when he comes back after his time in prison. He's truly regretful for this. And I'm sorry that it's happened. I'm sorry that the government has had to go to the expense and trouble of doing this. I did my best to persuade him at an early stage of this proceeding to accept responsibility, and I think the government's recommendation concerning punishment would have been much more lenient; but he has this idea about what he had to do in the case and I'm sorry for that because it's going to cost him now a couple years of life at least.

But I did want to offer the court some explanation. He's not just some hard headed, mean spirited person.

He's a good person. But I think he needs some help with this issue and I hope he can be psychologically evaluated and receive some sort of treatment while he's in custody so he can move past this obsession that he has.

Wayne, do you have anything you want to say?

THE DEFENDANT: No.

MR. BRACKETT: That's all I have, Your Honor.

THE COURT: All right. Anything further from the government?

MR. MARTENS: Just a few comments, Your Honor. I don't know Wayne Shatley from a hill of beans and neither does [17] the court. I don't know whether he's a good person or he's not. All I can do is look to the PSR, and it says this: That over and over and over Mr. Shatley has got a problem with sticking a gun in people's faces. There's repeated charges for that. So I think that has some bearing that it's included in the PSR and the court should take that into account.

I would again just reference the court to my statements about the fact that there was a substantial disruption. This was a close election. What Mr. Shatley did caused people to question the political process, and I think for that reason the court should sentence him at the high end of the guideline range. Thank you.

THE COURT: The court will state a sentence and then ask if there's comment before it's imposed.

Pursuant to the Sentencing Reform Act of 1984; it's the judgment of the court that defendant be placed in custody for a period of 33 months. The court finds the high

end of the guidelines is appropriate given the extensive disruption of a government service.

Now, then, upon release he'll be on supervised release for two years. That's on each count, one, two, four and seven, all running concurrently. And likewise, the sentences on each count concurrently, that is the custody. Within 72 hours of release from custody, he shall report in person to the probation office in the district to which he is [18] released.

While on supervised release, he shall not commit another federal, state or local crime, and shall comply with the standard conditions adopted by this court.

The periodic drug testing mandated by the violent crime Control and Law Enforcement Act of 1984 is hereby suspended. The offense is not drug related. Defendant has no current or past history of substance abuse.

He shall pay the United States a special assessment of $400.

It is further ordered that he pay the United States a fine of $2,000, without interest.

The court recommends that the BOP evaluate the defendant for psychological conditions. And that, of course, has no – is not a comment on his right to political opinions or the merit of any political opinions that he may have, but simply as requested by the defense counsel.

MR. BRACKETT: Yes, Your Honor. Thank you.

THE COURT: And the court finds it's appropriate.

You'll have a – you'll be able to report to the facility designated to you by the Bureau of Prisons as notified to you by the U.S. Marshal Service. That means that the terms of bond that you've been under up until today remain the same between today and the day you report to serve the sentence.

[19] Do you understand that?

THE DEFENDANT: (Affirmative nod.)

THE COURT: Should you fail to report as requested or as notified and – or if you fail to abide by the terms of bond, that would be a separate criminal offense for which you could be charged and given additional active time in prison.

Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: All right. And that surrender would be not before January 15 or after March 15, 2005. Now, if you wanted to report earlier, he could ask for that.

MR. BRACKETT: Yes, sir.

THE COURT: The court has considered defendant's financial obligations and assets, and the like, as reflected in the presentence report and finds that the defendant is able to pay the fine. But if he didn't pay it immediately, then it would be payable during the period of supervised release. But in the first instance, payable under the Inmate Financial Responsibility program while incarcerated. And if not thus paid, then afterwards during supervised release at $200 per month beginning 60 days after release from incarceration.

Throughout the period of supervision, the probation officer would monitor his economic circumstances and recommend any necessary changes to the payment schedule.

The court recommends he have access to educational

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